

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v.

FLOYD BINGHAM,

Defendant.

* * * * *

Case No. 08-CR-916 (SLT)

Brooklyn, New York

December 8, 2009

TRANSCRIPT OF CRIMINAL CAUSE FOR PLEADING
BEFORE THE HONORABLE VIKTOR H. POHORELSKY
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Government:

STEVEN LAWRENCE TISCIONE, ESQ.
Asst. United States Attorney
United States Attorney's Office
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Brooklyn, NY 11201

For the Defendant:

MARK A. KAPLAN, ESQ.
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Proceedings recorded by electronic sound recording,
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1 (Proceedings commenced at 3:10 p.m.)

2 THE CLERK: Criminal cause for a guilty plea in
3 CR-08-19 -- excuse me -- CR-08-916, the United States of
4 America versus Floyd Bingham.

5 Counsel, please state your appearances for the
6 record.

7 MR. TISCIONE: Steven Tiscione for the government.
8 Good afternoon, Your Honor.

9 MR. KAPLAN: Mark Kaplan for the defendant, Your
10 Honor. Good afternoon.

11 THE COURT: Good afternoon. Please be seated. Mr.
12 Bingham, I'm told that you're prepared to plead guilty to a
13 criminal offense. You can stay seated, counsel --

14 MR. KAPLAN: Thank you.

15 THE COURT: -- and Mr. Bingham. I'm told you're
16 prepared to plead guilty to a criminal offense.

17 The decision to do that is a serious one, of
18 course, and before the Court can accept your guilty plea, the
19 Court must be satisfied -- where is that -- do you know where
20 that's coming from? All right.

21 Before the Court can accept your guilty plea, the
22 Court must be satisfied that you understand the rights that
23 you are giving up by pleading guilty and the consequences,
24 the potential consequences, of a guilty plea. I'll discuss
25 those matters with you today and I'll be asking you some

1 questions as well.

2 The answers to the questions must be given under
3 oath, so my law clerk now will administer an oath for you to
4 take.

5 (The defendant is sworn.)

6 THE CLERK: Please state your name for the record.

7 THE DEFENDANT: Floyd Robert Bingham.

8 THE CLERK: Thank you. You may be seated.

9 THE COURT: All right, Mr. Bingham. You've taken
10 an oath to tell the truth and that means you are required to
11 do so.

12 If you should lie or intentionally mislead the
13 Court today you would be subject to prosecution for the crime
14 of perjury or making false statements.

15 Do you understand that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: If there's anything you do not
18 understand in the proceeding today, please don't hesitate to
19 tell me. I'll be happy to clarify or provide further
20 explanations about anything that's not completely clear to
21 you.

22 Do you understand that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: How old are you?

25 THE DEFENDANT: 37.

1 THE COURT: How far did you go in school?

2 THE DEFENDANT: I graduated 12th grade.

3 THE COURT: Have you had any difficulty
4 understanding what your attorney has explained to you about
5 the charges and your rights and other matters relating to
6 this case?

7 THE DEFENDANT: No, sir.

8 THE COURT: Are you now or have you in the recent
9 past been under the care of a doctor or a psychiatrist for
10 any reason?

11 THE DEFENDANT: No, sir.

12 THE COURT: In the last 24 hours, did you take any
13 pills, drugs or medications of any kind?

14 THE DEFENDANT: No, sir.

15 THE COURT: Did you have any alcoholic beverage to
16 drink in the last 24 hours?

17 THE DEFENDANT: No, sir.

18 THE COURT: Have you ever been hospitalized or
19 treated for narcotic addiction or any other kind of drug-
20 related problem?

21 THE DEFENDANT: No, sir.

22 THE COURT: Is your mind clear now as you sit here?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Mr. Kaplan, is it?

25 MR. KAPLAN: It is, Your Honor.

1 THE COURT: I presume you've discussed with Mr.
2 Bingham the question of entering a guilty plea?

3 MR. KAPLAN: I have, Your Honor.

4 THE COURT: In your view, does he understand the
5 rights that he will be waiving if he pleads guilty today?

6 MR. KAPLAN: Yes, Your Honor.

7 THE COURT: Do you have any question about his
8 competency to proceed today?

9 MR. KAPLAN: I do not, Judge.

10 THE COURT: Are you appointed or were you retained?

11 MR. KAPLAN: I was retained.

12 THE COURT: Mr. Bingham, are you satisfied with the
13 assistance that you've received thus far from Mr. Kaplan in
14 this matter?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Do you feel that you need any more time
17 to discuss with him the decision to plead guilty before we
18 proceed further today?

19 THE DEFENDANT: No, sir.

20 THE COURT: All right. This is Judge Townes's
21 case. It's a different judge. Judge Townes is the judge who
22 will sentence you if you plead guilty and Judge Townes is the
23 judge who has to make the final decision about whether to
24 accept your guilty plea.

25 If you wish, you have the absolute right to have

1 Judge Townes actually listen to the guilty plea instead of
2 me. And if you chose to have her listen to the plea instead
3 of me, no harm or prejudice of any kind could come to you
4 because you made that decision.

5 Do you understand that?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: On the other hand if you wish, you can
8 give up your right to have Judge Townes listen to the plea
9 and you could permit me to listen to the plea.

10 If you do that, a recording is now being made of
11 this proceeding and a written transcript will be prepared of
12 this proceeding by a court reporter which Judge Townes will
13 review in order to make the final determination about whether
14 to accept your plea and she may review that transcript also
15 in connection with sentencing.

16 I have a document here that appears to be signed by
17 you which indicates that you are willing to give up your
18 right to have Judge Townes listen to your plea and permit me
19 to listen to the plea. Let me ask you please to take a look
20 at this document. Is that your signature among those on the
21 document?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Do you in fact wish to give up your
24 right to have Judge Townes listen to your plea and permit me
25 to listen to your plea?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Do you make that decision voluntarily
3 and of your own free will?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Has anybody threatened you or made any
6 promise to you to induce you to allow me to listen to the
7 plea?

8 THE DEFENDANT: No, sir.

9 THE COURT: I understand you're prepared to plead
10 guilty to a lesser included offense of the offenses charged
11 in Count 3 of the superceding indictment in this case.

12 Mr. Tiscione, the lesser included offense is one
13 that contemplates a certain amount of -- a minimum of a
14 certain amount of marijuana? Is that correct?

15 MR. TISCIONE: Yes, Your Honor. It's a minimum
16 amount of 100 kilograms --

17 THE COURT: All right. Thank --

18 MR. TISCIONE: -- of marijuana.

19 THE COURT: -- thank you. Mr. Bingham, let me ask
20 you first. Did you receive a copy of the superceding
21 indictment in this matter?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: And did you review the charges in this
24 indictment as they relate to you with Mr. Kaplan?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: And you discussed the charges with him?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: Do you understand all of the charges at
4 least as they relate to you that are found in this
5 indictment?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: All right. Let me focus on Count 3,
8 the count to which I understand you're prepared to plead
9 guilty. And I'll actually discuss it in the context of
10 what's known as a lesser included offense that I understand
11 you're prepared to plead guilty to.

12 Count 3 charges you with conspiracy to import
13 marijuana. A conspiracy -- a criminal conspiracy in the
14 federal court -- is simply an agreement. An agreement has to
15 be between at least two people. It could include more.

16 It could include as many as conceivable, but it has
17 to be at least two people who agree that they'll work
18 together to accomplish some criminal purpose. That's what a
19 conspiracy is.

20 And if the government were to have to prove this
21 charge against you, they would have to prove that you had
22 such an agreement with at least one other person.

23 Now the object of this conspiracy that's charged in
24 Count 3 is to import marijuana which means that it was the
25 understanding of the people who engaged in this conspiracy

1 that they would obtain the marijuana somewhere outside the
2 United States and bring it into the United States. That
3 would be the purpose of the conspiracy, the object of it.

4 So the government would have to prove that that was
5 an understanding you had with at least one other person.

6 The government would have to prove this
7 understanding was in effect at some point between the period
8 of January 2000 and February of 2009 and the government would
9 also have to prove that in some way this conspiracy involved
10 the Eastern District of New York.

11 It could involve other places as well, obviously,
12 but the Eastern District of New York which means Brooklyn,
13 Queens, Staten Island and counties east of here. So those
14 are the elements of this offense which the government would
15 have to prove.

16 Oh. Finally, the government would have to prove
17 that it was contemplated among the members of the conspiracy
18 that the amount of drugs here involved would be 100 kilograms
19 or more of marijuana that would be imported into the United
20 States.

21 So do you understand what I've explained to you
22 about this charge?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: I presume that a not guilty plea was
25 entered with respect to this and the other charges in the --

1 MR. TISCIONE: That's correct, Your Honor.

2 THE COURT: -- superceding indictment already?

3 MR. TISCIONE: Yes.

4 THE COURT: All right. So you previously pleaded
5 not guilty to the offense, Mr. Bingham, and you have the
6 right to continue to plead not guilty to the offense even if
7 you're guilty.

8 Do you understand that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: If you maintain a plea of not guilty to
11 the charge, you have the right to a speedy and public trial
12 before a jury with the assistance of your attorney on this
13 charge and all the other charges in the indictment against
14 you.

15 Do you understand that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: At a trial, you would be presumed to be
18 innocent. You would not have to prove that you were
19 innocent. You would not have to prove anything.

20 The government has the burden of proof at a
21 criminal trial and the government's burden is to produce
22 evidence in court that satisfies a jury unanimously that the
23 defendant is guilty beyond a reasonable doubt.

24 If the government could not meet that burden of
25 proof at your trial, the jury would have the duty to find you

1 not guilty.

2 Do you understand that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: At the trial, witnesses for the
5 government would have to come to court and testify in your
6 presence.

7 Your attorney could cross-examine the witnesses, he
8 could object to evidence the government tried to introduce.
9 And he could offer evidence in your behalf. He could
10 subpoena and require witnesses to come to court and testify
11 in your behalf if there were witnesses who had information
12 helpful to your case.

13 Do you understand that?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: At the trial, you would have the right
16 to testify in your own behalf if you chose to testify. The
17 choice would be entirely up to you, however.

18 You could not be required to testify and that's
19 because the Constitution of the United States guarantees that
20 no defendant in a criminal case can be required to testify
21 and say something that might be used to show that he's
22 guilty.

23 If you chose to have a trial but chose not to
24 testify at the trial, the judge would instruct the jury that
25 they could not hold that against you.

1 Do you understand that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: If you plead guilty instead of going to
4 trial, you will be giving up your Constitutional right to a
5 trial and all the other rights I've just explained to you.
6 There will be no trial in this case.

7 You'll have no right to appeal to a higher court on
8 the question of whether or not you're guilty. Judge Townes
9 will simply enter a judgment of guilty and impose a sentence
10 on you based simply on your plea of guilty and without any
11 trial.

12 Do you understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: If you plead guilty, I will ask you
15 some questions about what you did in order to satisfy myself
16 that you are guilty. You will be required to answer the
17 questions.

18 In doing that, you will be giving up the right I
19 mentioned a few moments ago, the right not to say something
20 that can be used to show that you're guilty.

21 Do you understand that?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: So Mr. Bingham, are you willing to give
24 up your right to a trial and the other rights I've just
25 discussed with you?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: I understand you have an agreement with
3 the government concerning your plea. I have a document here
4 that appears to be the agreement. It bears today's date on
5 the last page and has various signatures on the last page
6 including one that appears to be yours.

7 Let me ask you to take a look at the document and
8 once you've satisfied yourself that you recognize it, if you
9 would turn to the last page.

10 Is that your signature among those on the last
11 page, Mr. Bingham?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Before you signed this document, did
14 you read the entire document?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Did you discuss the various terms of
17 this agreement with your attorney?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Do you understand literally everything
20 that's written in this document?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Except for any promises in writing in
23 this document, did anyone make any promise to you to induce
24 you to plead guilty?

25 THE DEFENDANT: No, sir.

1 THE COURT: All right. I'm going to mark this
2 document as Exhibit 1 for purposes of the proceeding today.
3 Let me review with you now the potential punishment for this
4 offense.

5 First of all, the statute under which you are
6 charged permits the Court to impose a term of imprisonment of
7 up to 40 years of imprisonment.

8 Do you understand that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: The same statute also requires the
11 Court to impose a minimum term of imprisonment of at least
12 five years.

13 Do you understand that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Now there are circumstances that permit
16 the Court to ignore that five-year mandatory minimum that's
17 otherwise required by the statute.

18 But the Court has to find certain facts to exist
19 and it has to make certain findings before the Court would be
20 permitted to ignore that five-year mandatory minimum.

21 If the Court is not able to make those factual
22 findings and to make those determinations, then the Court
23 will be required to impose that five-year mandatory minimum.

24 Do you understand that?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: In addition to a term of imprisonment,
2 the Court will be required to impose a term of supervised
3 release.

4 The term of supervised release will commence after
5 you complete any term of imprisonment that is imposed and the
6 term of supervised release must last for a minimum of five --
7 excuse me -- of four years and the Court could choose to
8 impose a term of supervised release that would last as much
9 as the rest of your life.

10 While you're serving a term of supervised release,
11 however long it may be, you'll be required to comply with
12 conditions that are set by the Court.

13 If you fail to comply with any of the conditions,
14 the Court has the option to sentence you to serve more time
15 in prison and on each occasion when the Court finds that you
16 have violated one or more of the conditions of supervised
17 release, the Court may impose an additional term of
18 imprisonment of up to four years of imprisonment without
19 giving you any credit for any time you previously spent in
20 prison in connection with this offense.

21 Do you understand that?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: You also may be fined up to \$2 million
24 and separate from the fine the Court will be required to
25 impose a \$100 special assessment. So those are the financial

1 penalties for this crime.

2 Do you understand that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Finally, there's also a forfeiture
5 that's contemplated here and forfeiture simply means that you
6 will be required to give up any right or title you have to
7 any of the property that was involved in this offense.

8 I believe the forfeiture is agreed upon in the
9 agreement here in paragraphs 8 through 16. This means that
10 you'll have to give up your right to any -- the money that's
11 in the judgment here. You'll be required to -- yes.

12 I gather it's -- it has to do with a money judgment
13 that's contemplated here. Is there any other property
14 involved, Mr. Tiscione?

15 MR. TISCIONE: No, Your Honor. It's just the money
16 judgment.

17 THE COURT: All right. So you understand that that
18 forfeiture will also be imposed?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: In sentencing you, Judge Townes will
21 have to consider sentencing guidelines that may affect the
22 decision she makes concerning the sentence to impose. Have
23 you discussed the operation of the sentencing guidelines with
24 your attorney?

25 (Counsel and the defendant confer.)

1 THE DEFENDANT: Oh yes, sir. Yes, sir.

2 THE COURT: All right. Let me explain the matter
3 briefly to you.

4 Before you are sentenced, Judge Townes will take
5 various matters into consideration in order to -- and these
6 matters include facts about your participation in the offense
7 and other factors relating to the commission of the offense
8 and will make a determination based on those factors what
9 guideline level applies to your case.

10 The guideline level that she determines in that
11 fashion will prescribe a range of months within which the
12 recommendation of the guidelines is that your sentence should
13 be imposed.

14 That is that the guideline level will state a
15 minimum number of months and a maximum number of months and
16 within that range is the recommendation of the guidelines
17 that you be sentenced. But Judge Townes is not required to
18 follow that recommendation.

19 She could decide that a sentence that was higher
20 than the range would be appropriate for your case.
21 Alternatively, she could decide that sentence below the range
22 would be appropriate but at a minimum, she has to decide what
23 the sentencing range is and then she has to consider
24 carefully whether a sentence within that range is appropriate
25 for your case.

1 Whatever sentence is imposed Judge Townes must give
2 good reasons for that particular sentence.

3 Do you understand what I've explained?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: I'm going to ask the attorneys to tell
6 me what they think the guidelines are likely to say for your
7 case, but understand that this is just their estimates.
8 Judge Townes has to make her own independent determination.
9 Mr. Tiscione, what's the government's calculation?

10 MR. TISCIONE: Your Honor, the government estimates
11 an offense level of 21 which assuming the defendant is
12 sentenced within criminal history 1 would yield a range of 37
13 to 46 months.

14 THE COURT: All right. Mr. Kaplan, did you have
15 any different or --

16 MR. KAPLAN: No, Your Honor.

17 THE COURT: -- additional guideline considerations?

18 MR. KAPLAN: I'm in concurrence with that opinion.

19 THE COURT: All right. So that's the estimate what
20 the guideline level will be.

21 As I said before, Judge Townes has to make her own
22 determination and she'll certainly listen to the attorneys
23 but she has to make her own determination. What's important
24 for you to understand now, though, is that until the time of
25 sentence -- and she won't make any of those determinations

1 until the time of sentence.

2 She won't determine what the guideline range is.
3 She won't determine whether or not to sentence you within the
4 range or to sentence you above or below the range. All those
5 decisions will await the day of sentence, literally. So no
6 one can tell you now what sentence will be imposed in this
7 case.

8 Do you understand that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: After sentence is imposed, you do have
11 a right to appeal your sentence, but only your sentence, if
12 you think that the Court has made some mistake in imposing
13 that sentence. Do you understand that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Mr. Bingham, do you have any questions
16 that you'd like to ask me about the charge here, your rights
17 or about anything else related to this matter that may not be
18 clear?

19 THE DEFENDANT: No, sir.

20 THE COURT: Mr. Kaplan, is there anything else I
21 should review with Mr. Bingham before we proceed further --

22 MR. KAPLAN: No, Your Honor.

23 THE COURT: -- to the allocution? Mr. Tiscione?

24 MR. TISCIONE: No, Your Honor.

25 THE COURT: Mr. Kaplan, do you know any reason why

1 Mr. Bingham should not enter a plea of guilty to the charge?

2 MR. KAPLAN: I do not, Your Honor.

3 THE COURT: Are you aware of any viable legal as
4 distinguished from factual defense to the charge?

5 MR. KAPLAN: No, Your Honor.

6 THE COURT: Mr. Bingham, are you ready to plead?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: How do you plead to the lesser offense
9 charged within Count 3 of the superceding indictment? Guilty
10 or not guilty?

11 THE DEFENDANT: Guilty, Your Honor.

12 THE COURT: Are you making this plea of guilty
13 voluntarily and of your own free will?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: Has anyone threatened you or forced you
16 to plead guilty?

17 THE DEFENDANT: No, sir.

18 THE COURT: Other than the agreement with the
19 government that we discussed a little earlier, did anyone
20 make any promise to you that caused you to plead guilty?

21 THE DEFENDANT: No, sir.

22 THE COURT: Has anyone made any promise to you
23 about the sentence you will receive?

24 THE DEFENDANT: No, sir.

25 THE COURT: Can you tell me briefly in your own

1 words what you did -- what conduct you engaged in -- in
2 committing the offense in Count 3?

3 THE DEFENDANT: I was -- I drove marijuana from one
4 designation to another a number of times. You know?

5 THE COURT: And you say from one -- you say
6 designation -- from one place to another?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Where -- where did you obtain the
9 marijuana that you drove?

10 THE DEFENDANT: Back home where I live.

11 THE COURT: And where was that?

12 THE DEFENDANT: I usually obtained it in the
13 Akwesasne Reservation somewhere.

14 THE COURT: I'm sorry?

15 THE DEFENDANT: Reservation back home -- Mohawk
16 Reservation back home. I usually retained it from there.

17 THE COURT: Okay. And --

18 MR. KAPLAN: Just to clarify, Your Honor, the
19 Akwesasne Reservation is partly in Canada and partly in the
20 United States.

21 THE COURT: All right. Do you know whether you
22 were on the Canadian side of the border?

23 THE DEFENDANT: No. I'm sure I never was.

24 THE COURT: You were not? Do you know what the
25 origin of that marijuana was?

1 THE DEFENDANT: It came from Canada. Yes.

2 THE COURT: You did know that at the time?

3 THE DEFENDANT: Yes.

4 THE COURT: And so your role was to drive that?
5 And where did you drive that marijuana to?

6 THE DEFENDANT: Different places throughout New
7 York City.

8 THE COURT: And did you go anywhere in Brooklyn or
9 Queens at times or did you come through Brooklyn and Queens?

10 THE DEFENDANT: More or less Queens and Manhattan.

11 THE COURT: Queens and Manhattan?

12 THE DEFENDANT: Yes.

13 THE COURT: And you actually made deliveries into
14 Queens at times?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Okay. Over what period of time did you
17 engage in this?

18 THE DEFENDANT: I believe like a two-year period.

19 THE COURT: And approximately what two-year period?

20 THE DEFENDANT: 2007 and 2009.

21 THE COURT: Okay. All right. And were you working
22 with anyone else in this enterprise or were you doing this
23 with --

24 MR. KAPLAN: Well, he was retained by various
25 individuals. Primarily one or two individuals --

1 THE COURT: Okay. So you were --

2 MR. KAPLAN: -- who had --

3 THE COURT: -- working with other people? You were
4 doing this with the understanding of others that you were
5 working with -- with whom you were working to accomplish
6 this --

7 THE DEFENDANT: Yes, sir.

8 THE COURT: -- this goal?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: Is there anything else about which I
11 should inquire -- oh. Let me ask one other -- over the
12 course of those deliveries, was the marijuana involved -- did
13 that exceed 100 kilograms of marijuana?

14 THE DEFENDANT: No, sir.

15 THE COURT: You don't think it exceeded that
16 amount?

17 MR. KAPLAN: Well, the actual conspiracy that he
18 was involved in certainly exceeded it even if he didn't
19 physically touch 100 kilograms. I think he did. I think he
20 was involved in at least that much himself.

21 THE COURT: Well, I have to find out from Mr.
22 Bingham.

23 MR. KAPLAN: Oh, he's talking about --

24 MR. TISCIONE: Just to clarify, not at one time.

25 THE COURT: No, no, no. I'm talking --

1 THE DEFENDANT: It wasn't -- oh, I'm sorry, sir.

2 THE COURT: Let me -- let me ask the question just
3 so we have a clear record of this. I didn't mean on any one
4 occasion that you transported more than 100 kilograms.

5 What I meant was throughout the two-year period, if
6 you took everything together, did your involvement include
7 transporting 100 kilograms or more?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: Okay. Is there anything else about
10 which I should inquire, Mr. Tiscione?

11 MR. TISCIONE: No, Your Honor.

12 THE COURT: Mr. Kaplan?

13 MR. KAPLAN: No, Your Honor.

14 THE COURT: All right. Based on the information
15 provided today, I find that Mr. Bingham is acting
16 voluntarily, that he fully understands the charge and his
17 rights and the consequences of his plea.

18 There is also a factual basis for the plea and,
19 therefore, I recommend that Judge Townes accept Mr. Bingham's
20 plea of guilty to the charge -- the lesser included charge in
21 Count 3 of the superceding indictment. Has Judge Townes set
22 a date for sentencing, Mr. Toritto?

23 THE CLERK: Yes, Your Honor. It's currently
24 scheduled for March 12th at 10 a.m.

25 THE COURT: All right. So that's the present day

1 on which you'll be sentenced. It could be moved, but as of
2 now, March 10th [sic] at 10 a.m. in this courthouse before
3 Judge Townes. That'll be the time of sentence.

4 Before that date, the Probation Office of the Court
5 will prepare a Pre-Sentence Report. You'll get a copy of the
6 report as will your attorney and the attorney for the
7 government and of course the Court will get a copy and you'll
8 have the opportunity to advise the Court if there are any
9 mistakes or omissions in the report.

10 To prepare the report, a Probation Officer will
11 have to interview you. You have the right to have your
12 attorney present during the interview.

13 That interview is the principal way that the Court
14 obtains information about your background and other personal
15 circumstances so that those matters can be taken into account
16 when the Court decides on an appropriate sentence and that
17 means it's often in the interest of the defendant to
18 cooperate with the Probation Office in that interview
19 process.

20 You should, of course, listen to your attorney's
21 advice with respect to that.

22 Is there any other matter that we should address
23 here today before we adjourn, counsel? Mr. Tiscione?

24 MR. TISCIONE: No, Your Honor.

25 THE COURT: Mr. Kaplan?

1 MR. KAPLAN: No, Your Honor.

2 THE COURT: All right. Let me return to counsel
3 for the government the agreement that was marked here so that
4 it can be used in further proceedings as necessary and we are
5 now adjourned.

6 MR. TISCIONE: Thank you, Judge.

7 (Proceedings concluded at 3:36 p.m.)

8 I, CHRISTINE FIORE, Certified Electronic Court
9 Reporter and Transcriber and court-approved transcriber,
10 certify that the foregoing is a correct transcript from the
11 official electronic sound recording of the proceedings in the
12 above-entitled matter.

13
14 

15 _____ January 12, 2010

16 Christine Fiore

17 Transcriber

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